

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 14547 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DIVISIONAL CONTROLLER G.S.R.T.C. - Petitioner(s)

Versus

CHIMANBHAI L PATEL - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner(s) : 1,
MR BHARAT JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

Rule. Learned advocate Shri Jani waives service of notice of rule on behalf of the respondent. At the request of the learned advocates appearing for the parties, the petition is taken up for final disposal

today.

2. In the present petition, the petitioner Gujarat State Road Transport Corporation has challenged the legality of the award dated 28th November 2003 passed by the Labour Court, Surat.

3. The respondent was employed by the petitioner as a Mechanic (Artisan-A). For remaining unauthorizedly absent for a period between 1.7.97 to 22.8.97, the respondent was issued a charge-sheet by the petitioner. Upon conclusion of the departmental inquiry, the Disciplinary Authority passed order dated 18.11.97 dismissing the respondent from service. The respondent challenged the said order of punishment before the Labour Court by raising a dispute being Reference (LCS) No.107/2000.

4. The Labour Court observed that the charges were proved against respondent, however considering the fact that in more than 30 years of service, this was the first occasion when the respondent had remained unauthorizedly absent, the Labour Court found that the punishment of dismissal from service was not commensurate with the proved misconduct. Considering the facts and

circumstances of the case, the Labour Court therefore, in exercise of powers sunder section 11-A of the Industrial Disputes Act interfered with the quantum of punishment, set aside the order of dismissal and directed that his service be considered as continuous from 18.11.97 i.e. date of dismissal till his date of superannuation and that he be paid all consequential benefits of retirement. For the intervening period, he was held entitled to receive 40 per cent of the wages.

5. Learned advocate Ms.Mandavia appearing for the petitioner strenuously urged that once the misconduct was proved against the respondent, it was not open for the Labour Court to interfere with the award of punishment. In any case, she contended, that the respondent cannot be allowed to get away without any punishment whatsoever. Reliance was placed on a decision of the learned single Judge of this Court dated 25th March 2005 rendered in Special Civil Application No.13424 of 2004. In the said decision, the learned single Judge was considering a case where the workman concerned was a driver of the State Road Transport Corporation who was given several notices and intimation during his unauthorized absence despite which he had not resumed duties. In the present case,

however, I find that there are mitigating circumstances as will be discussed hereinafter.

6. As noted earlier, the respondent herein was engaged as a Mechanic. Unauthorized absence of a workman would surely cause inconvenience to the employer, however, the manner in which the absence of a driver of the ST Corporation would disturb the functioning of the Corporation cannot be equated with that of absence of a Mechanic. In any case, it has come on record about which there is no dispute raised by the petitioner that in a long career spanning more than 30 years, this was the first incident wherein the respondent had remained unauthorizedly absent for a period of less than two months. The conclusion of the Labour Court that the punishment of dismissal from service under such circumstances was harsh and the resultant exercise of discretionary powers under section 11-A of the Industrial Disputes Act by the Labour Court, therefore, would call for no substantial interference, especially since workman has retired long back.

7. In the case of Union of India v. Giriraj Sharma, AIR 1994 SC 215, the Hon'ble Supreme Court found that the

punishment of dismissal from service imposed on an employee who overstayed the leave period after rejection of his application for extension of leave was harsh and disproportionate.

7.1 In the decision of State of Punjab v. Dharam Singh, AIR 1997 SC 1905, the Hon'ble Supreme Court ordered conversion of penalty from that of removal from service to compulsory retirement of an employee who was found to have remained absent from duty without leave.

7.2 In the decision in Shri Bhagwan Lal Arya v. Commissioner of Police, (2004) 4 SCC 560, the Hon'ble Supreme Court held that the punishment of dismissal from service on the ground of absence from duty was excessive and disproportionate and considering the mitigating circumstances, the dismissal order was set aside and it was ordered to be substituted with lesser punishment.

8. In the present case, I find that this was the first occasion when the respondent had committed such a misconduct in his more than 30 years of service. I therefore find that the Labour Court did not commit any error in interfering with the order of dismissal from

service. The respondent, however, cannot get away without any penalty whatsoever. In the result, it would be appropriate to provide that the respondent shall not be entitled to any backwages for the entire period and as a token punishment, the petitioner may also impose a punishment of withholding one increment without future effect which would be sufficient punishment in the facts of the present case.

9. With the above modification in the impugned award, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)